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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,909	04/04/2001	David L. Thompson	P-8999	3722

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MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MS-LC340
MINNEAPOLIS, MN 55432-5604

EXAMINER

OROPEZA, FRANCES P

ART UNIT PAPER NUMBER

3762

DATE MAILED: 10/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,909

Applicant(s)

THOMPSON ET AL.

Examiner

Frances P. Oropeza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/18/03 (Amendment).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-13 is/are pending in the application.
- 4a) Of the above claim(s) 8-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Restriction/ Election

1. Newly submitted claims 8-13 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Newly submitted independent claims 8 and 13 are directed to a method and computer readable medium, respectively. Claims 8 and 13 both claim the limitations of “intermittently... collecting data” and “substantially continuously transmitting data”; both of these limitations are not found in the original independent claim 1.

Since the Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 8-13 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

2. The Applicant's arguments filed 9/18/03 have been fully considered. The arguments regarding the rejection based on Prochazka et al., Salo et al. (and Schulman et al.) are convincing, hence this rejection of record is withdrawn.

Claim Rejections - 35 USC § 102

3. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Tockman et al. (US 5562707). Tockman et al. teach a method and apparatus to automatically optimized the pacing mode and pacing cycle parameters of an implantable stimulating device using and optimization sequence, read as providing a dynamic closed loop self monitoring

system. The apparatus comprises a pacemaker (10), a micro-controller (32) an RF telemetry link (40), and external sensors/ monitors (42-50), including and oximeter (50). (figure 1; col. 1 @ 8-15; col. 1 @ 66 – col. 2 @ 15; col. 3 @ 58-62; col. 3 @ 66 – col. 4 @ 24; col. 5 @ 8 – col. 6 @ 59).

The monitor (42) and sensor (44, 46, 48, 50, 52) are read to be the external sensor. It is well established that it is not novel to make two elements integral (Howard v. Detroit Stove Works, 150 US. 164 (1893)).

The Applicant's arguments filed 9/18/03 have been fully considered but they are not convincing.

The Applicant asserts Tockman et al. do not disclose an external sensor module transmitting physiological data by way of the sensor signals to the IMD using the telemetry link (RF signals) so the processor in the IMD can process the data collected by the external sensor to implement dynamic closed loop self monitoring therapy delivery. The Examiner disagrees. The processing of the sensor data can be performed by the external monitor (42) or by the microprocessor (32) of the implanted device (10) (col. 4 @ 52-56). As shown in figure 2, the sensor data enters the "software" of the implanted device microprocessor (32) at (figure 2 - 56) and follows path (figure 2 - 66) to the input block (figure 2 - 68) (col. 5 @ 44-49). The sensor data is transferred to the "software" located in the microprocessor (32) of the implanted device (10) using telemetry/ RF signals (40) (figure 1). The implementation of the "software" of figure 2 is read as implementing dynamic closed loop self monitoring therapy delivery, hence the rejection of record stands.

Claim Rejections - 35 USC § 103

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tockman et al. (US 5540727) in view of Kopotic (US 6470199). As discussed in paragraph 3 of this action, Tockman et al. disclose the claimed invention except for providing an external sensor module in the configuration of a sock.

Kopotic et al. teach oximetry sensing using an oximeter sensor module in the configuration of a sock for the purpose of securing the oximeter in place. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used a oximeter sensor module in the configuration of a sock in the Tockman et al. system in order to properly position the sensor on the patient, avoiding misalignment of the emitter and detector of the oximeter leading to faulty oximeter readings, inaccurate determination of the pulse rate and blood oxygen saturation and inappropriate therapy (col. 1 @ 19-24 and 34-52; col. 2 @ 30-42; col. 12 @ 55-56).

Statutory Basis

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza whose telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m..

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 306-4520 for regular communication and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

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10/24/03

Angela D. Sykes

ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700